IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
APPEAL FROM ORDER NO.381 OF 2005

Baijnath Brahmdeo Shah & anr. Appellants

Vs.

The Municipal Corporation of
Greater Mumbai Respondent

Mr.B.P.Shukla for appellants.
Mrs.Geeta Jogalekar for Respondent.

CORAM: B.H.MARLAPALLE,J.
June 20, 2005.

ORAL ORDER:

1. Heard Mr.Shukla, the learned counsel for the appellants. The Notice of Motion No. 829 of 2003 moved in L.C. Suit No.1060 of 2003 has been dismissed by the impugned order dated 5-3-2005 passed by the learned Judge of the City Civil Court at Mumbai.

2. In the Plaint the suit property has been described as piece and parcel of land with structure admeasuring 52' x 60' made of B.M. Wall and A.C. sheet roof situated on Survey No.74, Hissa No.12, CTS No.704, Hindustan Naka, M.G. Road, Kandiwali (West) and the relief sought for is for declaration as well as permanent injunction. It was prayed that the order dated 11-2-2003 passed by the Asst. Municipal

Commissioner based on the above notice dated 31-8-2001 issued under Section 351 of the Bombay Municipal Corporation Act be declared as illegal and bad in law. In the Notice of Motion an order of injunction was prayed for during the pendency of the suit.

3. The schedule of the property mentioned in the notice dated 31/8/2001 is construction of structure with brick masonry walls and A.C. sheet roof on M.S. sections admeasuring about 18 mtrs. x 11 mtrs. and the address was shown as Sainath Auto Works, (Naik Garage), Islam Compound, M.G. Road (Gandhi Nagar), Kandivli (West), Mumbai. A number of documents were relied upon in support of the contention that it was an authorised structure. When these documents were discarded reliance was placed on the Census certificate issued in favour of Vithabai Pandharinath Patil and it was claimed that the structure admeasuring 52 ft. x 60 ft. was purchased from Vithabai by agreement for sale dated 3-9-1991. The trial Court held that there was no prima facie case made out in asmuchas the premises covered by the order passed by the Asst. Municipal Commissioner and the premises covered by the census certificate in the

name of Vithabai Pail did not tally and, therefore, the census certificate could not be accepted as a prima facie proof. The view taken by the trial Court cannot, therefore, be held to be erroneous so as to call for interference in this appeal. The challenge to the order, therefore, fails and the appeal is dismissed in limine. However, if the appellants take out fresh Notice of Motion by providing better particulars of the suit premises and supported by the documentary evidence so as to make out a prima facie case the same may be considered on its own merits by the trial Court.

(B.H.MARLAPALLE,J.)